

respect to their promulgation and subsequent amendment. PHAs shall develop the specific procedures governing tenant consultation, but these procedures must be designed to give tenants (or, if appropriate, tenant councils) adequate opportunity to review and comment upon the pet rules before they are issued for effect. PHAs are solely responsible for the content of final pet rules, but must give consideration to tenant comments. PHAs shall send to the responsible HUD field office, copies of the final (or amended) pet rules, as well as summaries or copies of all tenant comments received in the course of the tenant consultation.

#### Subpart D—Definitions and Other General Requirements for Assistance Under the United States Housing Act of 1937

AUTHORITY: 42 U.S.C. 1437a and 3535(d).

SOURCE: 61 FR 5665, Feb. 13, 1996, unless otherwise noted.

##### § 5.400 Applicability.

This part applies to public housing (other than Indian housing under 24 CFR part 950) and Section 8 programs.

##### § 5.403 Definitions.

(a) The terms *displaced person*, *elderly person*, *near-elderly person*, and *person with disabilities* are defined at paragraph 3 of section 3(b) of the 1937 Act (42 U.S.C. 1437a(b)(3)).

(b) In addition to the terms listed in paragraph (a) of this section, the following definitions apply:

*Applicant* means a person or a family that has applied for housing assistance.

*Disabled family* means a family whose head, spouse, or sole member is a person with disabilities; or two or more persons with disabilities living together; or one or more persons with disabilities living with one or more live-in aides.

*Displaced family* means a family in which each member, or whose sole member, is a person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recog-

nized pursuant to Federal disaster relief laws.

*Elderly family* means a family whose head, spouse, or sole member is a person who is at least 62 years of age; or two or more persons who are at least 62 years of age living together; or one or more persons who are at least 62 years of age living with one or more live-in aides.

*Family* includes but is not limited to:

(1) A family with or without children (the temporary absence of a child from the home due to placement in foster care shall not be considered in determining family composition and family size);

(2) An elderly family;

(3) A near-elderly family;

(4) A disabled family;

(5) A displaced family;

(6) The remaining member of a tenant family; and

(7) A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family.

*Live-in aide* means a person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who:

(1) Is determined to be essential to the care and well-being of the persons;

(2) Is not obligated for the support of the persons; and

(3) Would not be living in the unit except to provide the necessary supportive services.

*Near-elderly family* means a family whose head, spouse, or sole member is a person who is at least 50 years of age but below the age of 62; or two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62 living with one or more live-in aides.

##### § 5.405 Basic eligibility; preference over single persons; and housing assistance limitation for single persons.

(a) *Basic eligibility.* An applicant must meet all of the eligibility requirements of the housing assistance for which an application is made in order to obtain the housing assistance. At a minimum, the applicant must be a family, and

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must be income-eligible. Eligible applicants include single persons who are not elderly persons, or displaced persons, or persons with disabilities.

(b) *Preference over single persons.* An applicant that is a one- or two-person elderly, disabled or displaced family, must be given a preference over an applicant that is a single person who is not an elderly or displaced person, or a person with disabilities, regardless of the applicant's Federal or local preferences.

(c) *Housing assistance limitation for single persons.* A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family may not be provided:

(1) For public housing and other project-based assistance, a housing unit with two or more bedrooms; or

(2) For tenant-based assistance, housing assistance for which the family unit size as determined by the HA subsidy standard exceeds the one bedroom level.

(d) This section shall not apply to the Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals set forth at 24 CFR part 882, subpart H.

[61 FR 5665, Feb. 13, 1996, as amended at 61 FR 13616, Mar. 27, 1996]

#### § 5.410 Selection preferences.

(a) *Applicability.* The selection preferences that are described in this part are applicable to public housing and housing assisted under the Section 8 Housing Assistance Payments program. (Corresponding provisions applicable to the Indian housing program are found in 24 CFR part 950.) These preferences are administered by the entity responsible for admission functions in the programs covered ("responsible entity"), i.e., the public housing agency ("HA") in the public housing and Section 8 Certificate/Voucher and Moderate Rehabilitation programs and the owner in all other Section 8 programs.

(b) *Types of preference.* There are three types of admission preferences:

(1) "Federal preferences" are admission preferences for three categories of families, as prescribed in 42 U.S.C. 1437d(c)(4)(A), 1437f(d)(1)(A), 1437f(o)(3),

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and 1437f note. Federal preference is given for selection of families that are:

(i) Involuntarily displaced;

(ii) Living in substandard housing (including families that are homeless or living in a shelter for the homeless); or

(iii) Paying more than 50 percent of family income for rent.

(2) "Ranking preferences" are preferences that may be established by the responsible entity to use in selecting among applicants that qualify for federal preferences.

(3) "Local preferences" are preferences for use in selecting among applicants without regard to their federal preference status. (See 42 U.S.C. 1437d(c)(4)(A), 1437f(d)(1)(A), 1437f(o)(3), and 1437f note.)

(c) *System.* In the Section 8 programs other than the Certificate/Voucher and Moderate Rehabilitation programs, the owner must establish a system for selection of applicants from the waiting list that includes the following:

(1) How the federal preferences will be used;

(2) How any ranking preferences will be used;

(3) How any local preferences will be used; and

(4) How any residency preference will be used.

(d) *Use of preference in selection process—(1) Factors other than federal and local preferences—(i) Characteristics of the unit.* For developments administered under the Section 8 programs and for public housing, the responsible entity may, in selecting a family for a particular unit, match other characteristics of the applicant family with the type of unit available, e.g., number of bedrooms. In selection of a family for a unit that has special accessibility features, the responsible entity must give preference to families that include persons with disabilities who can benefit from those features of the unit (see 24 CFR 8.27 and 24 CFR 100.202(c)(3)). Also, in selection of a family for a unit in a mixed population project, the responsible entity will give preference to elderly families and disabled families (see subpart D of part 960 or § 880.612a or § 881.612a of this title).

(ii) *Singles preference.* See § 5.405.